

if a prior petition was filed and resolved on the merits by a court of competent jurisdiction. Since the petitioner previously filed a petition that was resolved on the merits by the trial court, the petitioner's second petition was properly dismissed. Moreover, T.C.A. § 40-30-206(c) (1996 Supp.) states that the trial court shall dismiss any subsequent petition if it appears a prior petition is already pending in the Court of Criminal Appeals. At the time the petitioner filed his second petition in the trial court, his first petition was on appeal to this Court. For these reasons, the petitioner's second petition for post-conviction relief was properly dismissed.

We conclude, therefore, that the trial court did not err in dismissing the petitioner's second petition for post-conviction relief. Accordingly, it is hereby ORDERED that the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

Enter, this the ____ day of January, 1998.

DAVID G. HAYES, JUDGE

CONCUR:

JOE B. JONES, PRESIDING JUDGE

JOE G. RILEY, JUDGE